In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 555

JACK T. RAINWATER, CAROLE ALTER, MARY E. EPPEHIMER, MARY J. FELKINS, JOSEPH F. HATCHER, ROSALYN A. NADLER AND DONALD O. PINDER, PETITIONERS

v.

THE STATE OF FLORIDA

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF FLORIDA, THIRD DISTRICT

MEMORANDUM FOR THE UNITED STATES

1. On November 14, 1966, the Court requested the Solicitor General to express the views of the United States in the above-entitled case. In light of the matters noted in paragraph 2 below, we do not consider at length the legal issues presented in this case. We do point out that, if in *Marchetti* v. *United States,* No. 38, this Term,[1] and *Grosso* v. *United States,* No. 181, this Term, the Court's *Kahriger* and *Lewis* decisions are followed, petitioners' State convictions

[1] We assume that the Court will hear No. 38 in light of the abatement of *Costello* v. *United States*, No. 41, this Term.

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would appear to involve no violation of Fifth Amendment rights. Should the Court, however, adopt a use-restriction rule, as alternatively suggested in the government's briefs in Nos. 41 and 181, this may be an appropriate case in which to apply such a rule to require the exclusion of evidence and other information obtained as a result of petitioner Rainwater's compliance with the federal wagering tax laws.[2] Cf. *Boynton* v. *State*, 75 So. 2d 211 (Fla.).

2. Subsequent to November 14, 1966, and in keeping with the review policy described in our Supplemental Memorandum in *Schipani* v. *United States*, No. 504, this Term (pp. 4–5), the Department of Justice has ascertained that electronic surveillance indirectly involving two of petitioners was conducted by agents of the federal government during 1962. None of petitioners here was the subject of direct electronic surveillance, but petitioners Rainwater and Alter were participants in conversations which were electronically monitored. This monitoring was done by means of a microphone, installed by trespass, at a business establishment where petitioner Rainwater and others frequently met, and provided investigatory leads to petitioners and to the location of petitioner Rainwater's place of business. Subsequently, physical (not electronic) surveillance by other federal agents of this place of business and of several of petitioners ensued. On the basis of all of the information ob-

[2] Rainwater, we note, was the only one of petitioners who had registered under the provisions of the federal wagering tax laws.

tained, a search warrant was procured for petitioner Rainwater's place of business. Pursuant to a search of said premises, evidence was obtained which was subsequently turned over to authorities of the State of Florida. All petitioners here were present when and at the place where the search warrant was executed. There is no reason to believe that State authorities knew of the possible taint.

3. We have notified appropriate Florida officials of the matters here discussed, and have served copies of this memorandum on such officials and on petitioners' counsel. Since this case involves State, not federal, convictions, we regard it as inappropriate to suggest a disposition, leaving that to the parties directly involved.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JANUARY 1967.

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